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JUN 02 2009

CLERK U S DISTRICT
DISTRICT OF ARIZA

BY _____

DIANE J. HUMETEWA
United States Attorney
District of Arizona

KEVIN M. RAPP
Assistant U.S. Attorneys
State Bar Number: 014249
Email: kevin.rapp@usdoj.gov
Two Renaissance Square
40 North Central Avenue, Suite 1200
Phoenix, Arizona 85004
Telephone (602) 514-7500

UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

United States of America,

Plaintiff,

CR-08-0612-02-PHX-NVW

PLEA AGREEMENT

Gheorghe Babeti,

Defendant.

Plaintiff, United States of America, and defendant, Gheorghe Babeti, with the consent and agreement of defense counsel, hereby agree to the following disposition of this matter:

PLEA

Defendant will plead guilty to the following : Count 7 a violation of Title 18, United States Code, Section 1349, Conspiracy to Commit Wire Fraud, a Class B Felony Offense.

TERMS

Defendant understands that the Court is required to consider the United States Sentencing Guidelines (“U.S.S.G.” or “Sentencing Guidelines”), among other factors in Title 18, United States Code, Section 3553, in determining defendant’s sentence. Defendant understands, however, that the Sentencing Guidelines are only advisory, and that after considering the Sentencing Guidelines, the Court is free to exercise its discretion to impose any reasonable sentence up to the maximum set by statute for the crimes of conviction.

1. Maximum Penalties

2 a. A violation of Title 18, United States Code, Section 1349, is punishable by a
3 maximum fine of \$1,000,000 (or pursuant to Title 18, United States Code, Section 3571(d), the
4 Court may impose an alternative maximum fine of the greater of twice the gross pecuniary gain
5 derived from the offense, or twice the gross pecuniary loss suffered by another person because
6 of the offense), a maximum term of imprisonment of thirty (30) years, a term of supervised
7 release of five (5) years, or all three combined. If probation is available, the maximum period
8 of probation is five (5) years.

9 b. According to the advisory Sentencing Guidelines issued pursuant to the Sentencing
10 Reform Act of 1984, the Court shall:

22 c. Pursuant to Title 18, United States Code, Section 3013, the Court is required to
23 impose a special assessment on defendant of \$100.00. Defendant agrees that the special
24 assessment shall be due at the time defendant enters the plea of guilty, but in no event shall it be
25 paid later than the time of sentencing.

26 2. Agreements Regarding Sentencing

1 a. The parties stipulate pursuant to 11(c)(1)(C) to the following if the plea agreement
 2 is entered no later than **June 1, 2009**: (1) that the loss is between \$200,000 and \$400,000
 3 (U.S.S. G. § 2B1.1(b)(1); (2) that the defendant had a minor role in the criminal activity pursuant
 4 to 3B1.2(b).

5 b. The government recommends, pursuant to 11(c)(1)(B), that the defendant will
 6 receive a six level departure/variance from the applicable guidelines based on mental health
 7 issues and other family circumstances. C.B.

8 c. The United States retains the unrestricted right to make any and all statements it
 9 deems appropriate to the Probation Office and to make factual and legal responses to any
 10 statements made by the defendant or defense counsel or objections to the presentence report or
 11 to questions by the court at the time of sentencing.

12 d. Acceptance of Responsibility Assuming the defendant makes full and complete
 13 disclosure to the U.S. Probation Office of the circumstances surrounding the defendant's
 14 commission of the offense, if the plea is entered no later than **June 1, 2009**, and, if the defendant
 15 demonstrates an acceptance of responsibility for this offense up to and including the time of
 16 sentencing, the United States will stipulate: (1) a two-point reduction in the advisory sentence
 17 guideline offense level, as set forth in Section 3E1.1 of the Guidelines; or (2) if defendant's
 18 offense level is a level 16 or greater, before factoring in any reduction for acceptance of
 19 responsibility, the United States will recommend a three-point reduction in the applicable
 20 sentence guideline offense level, pursuant to Section 3E1.1 of the U.S.S.G.

21 e. Criminal History Options This plea agreement is expressly conditioned upon the
 22 accuracy of the defendant's criminal history as known by the government at the time of the plea.
 23 The discovery of any criminal history in addition to that known shall entitle the government to
 24 withdraw from this agreement. The government is aware of the criminal history listed in
 25 defendant's U.S. Pretrial Services report.

26 3. Agreement to Make Restitution

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Defendant specifically agrees to make restitution as ordered by the Court, the precise amount to be determined at sentencing.

3 | 4. Agreement to Dismiss or Not to Prosecute

4 Pursuant to Fed. R. Crim. P. 11(c)(1)(A), the United States will dismiss Counts 1-6 and
5 8-18 of the indictment. This agreement does not, in any manner, restrict the actions of the
6 United States in any other district nor bind any other United States Attorney's Office.

7 | 5. **Waiver of Defenses and Appeal Rights**

8 The defendant waives any and all motions, defenses, probable cause determinations, and
9 objections which the defendant could assert to the Indictment, or to the Court's entry of
10 judgment against the defendant, and imposition of sentence upon the defendant, provided the
11 sentence is consistent with this agreement. The defendant further waives: (1) any right to appeal
12 the Court's entry of judgment against defendant; (2) any right to appeal the imposition of
13 sentence upon defendant under Title 18, United States Code, Section 3742 (sentence appeals);
14 and (3) any right to collaterally attack defendant's conviction and sentence under Title 28,
15 United States Code, Section 2255, or any other collateral attack. The defendant acknowledges
16 that this waiver shall result in the dismissal of any appeal or collateral attack the defendant might
17 file challenging his conviction or sentence in this case.

18. 6. Perjury and Other False Statement Offenses or Other Offenses

19 Nothing in this agreement shall be construed to protect the defendant in any way from
20 prosecution for perjury, false declaration or false statement, or any other offense committed by
21 defendant after the date of this agreement. Any information, statements, documents, and
22 evidence which defendant provides to the United States pursuant to this agreement may be used
23 against the defendant in all such prosecutions.

24 || 7. Reinstitution of Prosecution

If defendant's guilty plea is rejected, withdrawn, vacated, or reversed at any time, the United States will be free to prosecute the defendant for all charges of which it has knowledge, and any charges that have been dismissed because of this plea agreement will be automatically

1 reinstated. In such event, defendant waives any objections, motions, or defenses based upon the
2 Statute of Limitations, the Speedy Trial Act or constitutional restrictions in bringing of the later
3 charges or proceedings. The defendant understands that any statements made at the time of the
4 defendant's change of plea or sentencing may be used against the defendant in any subsequent
5 hearing, trial, or proceeding as permitted by Fed. R. Crim. P. 11(f) and Fed. R. Evid. 410.

6 **8. Disclosure of Information to U.S. Probation Office**

7 Defendant will cooperate fully with the U.S. Probation Office. Such cooperation will
8 include truthful statements in response to any questions posed by the U.S. Probation Office,
9 including, but not limited to:

10 a. All criminal history information, i.e., all criminal convictions as defined under the
11 Sentencing Guidelines.

12 b. All financial information, e.g., present financial assets or liabilities that relate to
13 the ability of the defendant to pay a fine or restitution.

14 c. All history of drug abuse which would warrant a treatment condition as part of
15 sentencing.

16 d. All history of mental illness or conditions which would warrant a treatment
17 condition as a part of sentencing.

18 **9. Forfeiture, Civil, and Administrative Proceedings**

19 a. Nothing in this agreement shall be construed to protect defendant from civil or
20 administrative forfeiture proceedings, or prohibit the United States from proceeding with and/or
21 initiating a civil or administrative forfeiture action. If requested by the United States, the
22 defendant will testify in any civil or administrative forfeiture proceeding, and such testimony
23 will be truthful.

24 b. Defendant will identify all assets, and identify the source of income used to obtain
25 the assets. Defendant will identify all assets used to facilitate the commission of any crime
26 charged in the Indictment. Defendant will accurately and completely complete a Financial
27 Statement of Debtor, OBD-500 Form. Defendant agrees to take all steps as requested by the

1 United States to obtain from any other parties, by any lawful means, any records of assets owned
2 by the defendant.

3 c. If so requested by the United States, defendant will consent to the forfeiture of all
4 forfeitable assets, and shall transfer such assets to the United States as directed by the United
5 States.

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7 **ELEMENTS AND FACTUAL BASIS**

8 **ELEMENTS**

9 I, Gheorghe Babeti, agree that if this matter were to proceed to trial, the United States
10 could prove I committed the crime of conspiracy to commit Wire Fraud within the District of
11 Arizona during the times specified in the Indictment. Specifically, I agree that at trial, the
12 United States could prove the elements of the crime and the facts set forth below beyond a
13 reasonable doubt.

14 **Elements**

15 **Conspiracy**

16 I understand that the essential elements of Conspiracy, in violation of Title 18, United
17 States Code, Section 1349, are as follows:

18 (1) Within the time frame set forth in the Indictment, there was an agreement between two
19 or more persons to commit one or more of the crimes of Wire Fraud;

20 (2) Defendant became a member of the conspiracy knowing of at least one of its objects
21 (Wire Fraud) and intending to help accomplish it; and

22 (3) One of the members of the conspiracy performed at least one overt act for the purpose
23 of carrying out the conspiracy.

24 **Wire Fraud**

25 I understand that the essential elements of Wire Fraud, in violation of Title 18, United
26 States Code, Section 1343, are as follows:

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4 (2) Defendant and other co-conspirators knew that the promises and statements were
5 false;

6 (3) The promises or statements were material, that is they would reasonably influence a
7 person to part with money or property;

8 (4) Defendant and other co-conspirators acted with the intent to defraud; and

9 (5) Defendant and other co-conspirators used, or caused to be used, wire, radio or
10 television communications in interstate or foreign commerce to carry out an essential part of the
11 scheme

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13 I **Conspiracy to Commit Wire Fraud**

14 From July 1, 2006, through November 2, 2006, in the District of Arizona, at the
15 direction of my daughter Georgiana Dobos and son-law Samuel Dobos, I signed ten residential
16 loan applications for the properties detailed in the indictment. Each application contained the
17 following false information: the intent to occupy the property as a primary residence, an
18 overstatement of gross monthly wages, representation that I worked at or held a position at a
19 company known as Woodpro and I further misrepresented my assets and liabilities.

20 As a result of these false statements, a lending institution approved my application for
21 a loan and wired funds from outside of the District of Arizona to a financial institution in
22 Arizona. I would attend the closings at escrow companies located in Phoenix, sign necessary
23 documents to close the transactions, and received some portion of the proceeds. I never
24 occupied the homes that I purchased or otherwise took control of them. Indeed, I never had any
25 intention of living at any of the homes that I purchased.

26 This is not complete statement of my role in the conspiracy.

I Swear to the Accuracy of My Statements

2 I understand that I will have to swear under oath to the accuracy of this statement, and if
3 I should be called upon to testify about this matter in the future, any intentional material
4 inconsistencies in my testimony may subject me to additional penalties of perjury or false
5 swearing which may be enforced by the United States under this agreement.

DEFENDANT'S APPROVAL AND ACCEPTANCE

7 I have read each of the provisions of the entire plea agreement with the assistance of
8 counsel and understand its provisions.

9 I have discussed the case and my constitutional and other rights with my attorney. I
10 understand that by entering my plea of guilty I will be giving up my rights to plead not guilty,
11 to trial by jury, to confront, cross-examine, and compel the attendance of witnesses, to present
12 evidence in my defense, to remain silent and refuse to be a witness against myself by asserting
13 my privilege against self-incrimination -- all with the assistance of counsel -- and to be presumed
14 innocent until proven guilty beyond a reasonable doubt.

15 I agree to enter my guilty plea as indicated above on the terms and conditions set forth
16 in this agreement.

17 I have been advised by my attorney of the nature of the charges to which I am entering
18 my guilty plea. I have further been advised by my attorney of the nature and range of the
19 possible sentence and that my ultimate sentence will be determined after consideration of the
20 advisory Sentencing Guidelines. I understand that the Guideline Range referred to herein or
21 discussed with my attorney is not binding on the Court and is merely an estimate.

22 My guilty plea is not the result of force, threats, assurances or promises other than the
23 promises contained in this agreement. I agree to the provisions of this agreement as a voluntary
24 act on my part and I agree to be bound according to its provisions.

25 I fully understand that, if I am granted probation or placed on supervised release by the
26 Court, the terms and conditions of such probation/supervised release are subject to modification
27 at any time. I further understand that, if I violate any of the conditions of my probation/

1 supervised release, my probation/supervised release may be revoked and upon such revocation,
2 notwithstanding any other provision of this agreement, I may be required to serve a term of
3 imprisonment or my sentence may otherwise be altered.

4 I agree that this written plea agreement contains all the terms and conditions of my plea
5 and that promises made by anyone (including my attorney), and specifically any predictions as
6 to the guideline range applicable, that are not contained within this written plea agreement are
7 without force and effect and are null and void.

8 I am very satisfied that my defense attorney has represented me in a competent manner.

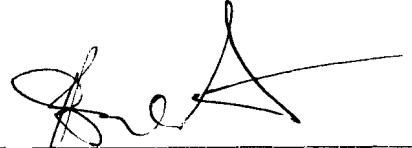
9 I am fully capable of understanding the terms and conditions of this plea agreement. I
10 am not now on or under the influence of any drug, medication, liquor, or other intoxicant or
11 depressant, which would impair my ability to fully understand the terms and conditions of this
12 plea agreement.

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15 Date

16 05/27/2007



17 Gheorghe Babeti
18 Defendant

DEFENSE ATTORNEY'S APPROVAL

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I have discussed this case and the plea agreement with my client, in detail and have
advised the defendant of all matters within the scope of Fed. R. Crim. P. 11, the constitutional
and other rights of an accused, the factual basis for and the nature of the offense to which the
guilty plea will be entered, possible defenses, and the consequences of the guilty plea including
the maximum statutory sentence possible. I have further discussed the concept of the advisory
Sentencing Guidelines with the defendant. No assurances, promises, or representations have
been given to me or to the defendant by the United States or by any of its representatives which
are not contained in this written agreement. I concur in the entry of the plea as indicated above
and on the terms and conditions set forth in this agreement as in the best interests of my client.

1 I agree to make a bona fide effort to ensure that the guilty plea is entered in accordance with all
2 the requirements of Fed. R. Crim. P. 11.

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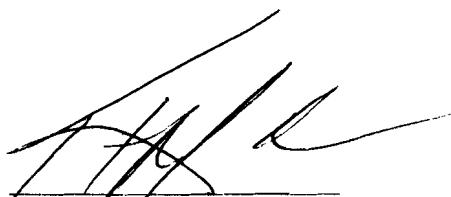
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Date

05/27/2009



Kurt M. Altman
Attorney for Defendant

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UNITED STATES' APPROVAL

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I have reviewed this matter and the plea agreement. I agree on behalf of the United States
11 that the terms and conditions set forth are appropriate and are in the best interests of justice.

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DIANE J. HUMETEWA
United States Attorney
District of Arizona

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Date

6/2/09


KEVIN M. RAPP

Assistant U.S. Attorney

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COURT'S ACCEPTANCE

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Date

NEIL V. WAKE
United States District Judge

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